

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

12 September 2008

STATUS: Immediate

**Masstores (Pty) Ltd v Murray & Roberts Construction (Pty) Ltd
(573/2007) 94 [2008] ZASCA (12 September 2008)**

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal today dismissed an appeal against a decision of Schwartzman J in the High Court, Johannesburg, in which he upheld an exception to the claim of Masstores against Murray & Roberts for some R169m. The claim was based on the alleged negligent conduct of Murray & Roberts in not taking steps to prevent a fire, started by a subcontractor in the roof of a warehouse owned by Masstores, during the course of effecting additions to the warehouse. The entire warehouse and its contents were destroyed in the fire.

The contract between the parties provided that Masstores indemnified Murray & Roberts against claims for damage to the existing structure and its contents. Masstores argued that the provision related to claims only by third parties, and not itself, and was also ambiguous, thus not covering negligent conduct.

The Johannesburg High Court found that the provision did exempt Murray & Roberts from liability. The Supreme Court of Appeal, upholding this finding, concluded that the provision at issue was not uncertain at all and the contract clearly allocated the risk in the existing structure, irrespective of fault, to Masstores.
